HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR

DIVISION BENCH

CORAM : **HON'BLE SHRI S.R. NAYAK, C.J.**
HON'BLE SHRI D.R. DESHMUKH, J.

W. P. NO.873 OF 1999

PETITIONERS

1. The State of Madhya Pradesh through The Secretary, Man Power and Planning Department, Government of Madhya Pradesh, Vallabh Bhawan, Bhopal.
2. The Director Technical Education, Satpuda Bhawan, Bhopal.
3. The Principal Government Engineering College Raipur.

Versus

RESPONDENTS

1. Biharilal son of Sunderlal, Engineering College Colony, Raipur (M.P.)
2. Dayanand son of Kangaloonand, Engineering College, Colony, Raipur (M.P.)
3. Ganu Ram Dhruv, son of Faguwa Ram Engineering College Colony, Raipur (M.P.)
4. Shivlal Yadav, son of Panchamlal Yadu, Engineering College, Colony, Raipur (M.P.)
5. Kashi Ram Patel, son of Ram Prasad Engineering College Colony, Quarter No. H/142, Raipur (M.P.)
6. M.M. Awasthi, son of Jagannath Prasad Awasthi, Engineering College Colony, Raipur (M.P)
7. Jugu Ram Mahanand, son of Sunderlal Mahanand, Assistant Instructor, Government Engineering College, Raipur (M.P.)
8. The Madhya Pradesh State Administrative Tribunal, Jabalpur.

Present : Shri Vinay Harit, learned Dy. Advocate General, for the State/ petitioners.

Shri Anis Pandey, learned counsel for respondents 1 to 7.

(ORAL ORDER)
(Passed on 20th March, 2006)

The following order of the Court was passed by **S.R. Nayak, CJ.**

Heard learned counsel for the parties and perused the impugned order dated 05-10-1998 passed by Madhya Pradesh State Administrative Tribunal, Jabalpur in Transferred Application No.2180/1988.

(2) To put the case of respondents 1 to 7 in brief is that before the Madhya Pradesh Educational Departmental Technical Branch Class-III (Non-Ministerial) Recruitment Rules, 1980 **(for short "the Rules")** were framed under the proviso to Article 309 of the Constitution of India, respondents 1 to 7 who held the post of Assistant Instructor were treated on par with Skilled Attendants/ Skilled Assistants and both of them held Class-IV posts and same pay-scale was attached to both the posts. They were also treated as equals in terms of Tarachand Pay Commission recommendations as well as the recommendations of Pandey Pay Commission and, therefore, their exclusion from the operation of the Rules tantamounts to invidious discrimination violating Article 14 postulates. The Tribunal finding merit in the above contention of respondents 1 to 7 allowed the application filed by them and directed the department to place respondents 1 to 7 also in the same cadre of Skilled Attendants/ Skilled Assistants and they should be paid in terms of same pay-scale attached to the post of Skilled Attendant/ Skilled Assistant w.e.f. 01-01-1981

(3) The State and its authorities being aggrieved by the above order of the Tribunal have preferred this writ petition under Article 226 and 227 of the Constitution.

(4) Having heard learned counsel for the parties, we find a fatal flaw in the impugned order of the Tribunal. In this case, admittedly, the Rules have no application to respondents 1 to 7. The Governor of the State has framed the Rules by exercising the power conferred under the proviso to Article 309 of the Constitution of India and they have statutory force. If admittedly the Rules do not have application to respondents 1 to 7, the respondents 1 to 7 without challenging the vires of the Rules cannot seek the benefits flowing under the said Rules in favour of the employees holding the post of Skilled Attendant/ Skilled Assistant. Above all, it needs to be noticed that after framing of the Rules in the year 1980, Skilled Attendants / Skilled Assistants are placed in Class-III service, whereas respondents 1 to 7 remained in Class-IV service only. Therefore, it is not permissible for the respondents 1 to 7 to claim parity of the pay-scale attached to the post of Skilled Attendant/ Skilled Assistant or to claim that they should also be placed in Class-III service. There is no need for us to dilate on this aspect, because, if that was the case of respondents 1 to 7, as already pointed out *supra*, they ought to have challenged the validity of the Rules and sought appropriate consequential reliefs. Looking from any angle, we cannot sustain the impugned order passed by the Tribunal.

(5) In the result and for the foregoing reasons, we allow the writ petition and set aside the order of the Madhya Pradesh State Administrative Tribunal at Jabalpur, dated 05-10-1998, passed in

Transferred Application No.2180/1988 and dismiss the Transferred Application No.2180/1988, however, with no order as to costs.

Sd/-
Chief Justice

Sd/-
Dilip Raosaheb Deshmukh
Judge